

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF WEST VIRGINIA**

**Cheryl Dean Riley**  
Clerk of Court

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**Michelle Widmer-Eby**  
Chief Deputy Clerk

September 29, 2021

Via CM/ECF  
Rusty J. Bittinger, Jr.  
c/o F. Samuel Byrer  
F. Samuel Byrer, PLLC  
PO Box 597  
Charles Town, WV 25414  
and  
H. Charles Carl, III  
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and  
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Via CM/ECF  
Victoria Diane Yates  
c/o Afton L. Aman  
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and  
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217 W. King Street, Room 102  
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Via CM/ECF

Enterprise Rent-A-Car Company of KY, LLC  
c/o David L. Wyant  
Bailey & Wyant, PLLC  
1219 Chapline St.  
Wheeling, WV 26003  
and  
Diane G. Senakievich  
Bailey & Wyant, PLLC - Wheeling  
1219 Chapline St.  
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Via CM/ECF

Nationwide Mutual Insurance Company  
c/o Ashley Hardesty Odell  
Bowles, Rice, LLP - Morgantown  
125 Granville Square  
Suite 400  
Morgantown, WV 26501  
and  
Ronda L. Harvey  
Bowles, Rice, McDavid, Graff & Love - Charleston  
PO Box 1386  
600 Quarrier St.  
Charleston, WV 25325-1386

In Re: Rusty J. Bittinger, Jr. v. Victoria Diane Yates, et al.  
Civil Action No. 3:12-cv-129

Dear Mr. Bittinger, Ms. Yates, Enterprise Rent-A-Car Company of KY, LLC, and  
Nationwide Mutual Insurance Company,

I have been contacted by Chief Judge, Gina M. Groh, who presided over the above-mentioned case. Judge Groh informed me that it has been brought to her attention that while she presided over the case, her husband owned stock in Nationwide. Her husband's ownership of stock neither affected nor impacted her decisions in this case, which was remanded to the Circuit Court of Hampshire County with no substantive orders issued by Judge Groh. However, her husband's stock ownership would have required recusal under the Code of Conduct for United States Judges, and thus, Judge

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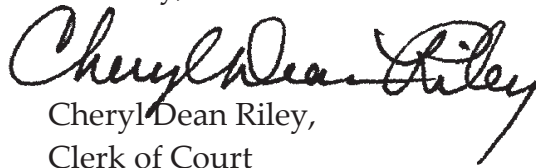
Groh directed that I notify the parties of the conflict.

Advisory Opinion 71, from the Judicial Conference Codes of Conduct Committee, provides the following guidance for addressing disqualification that is not discovered until after a judge has participated in a case:

[A] judge should disclose to the parties the facts bearing on disqualification as soon as those facts are learned, even though that may occur after entry of the decision. The parties may then determine what relief they may seek and a court (without the disqualified judge) will decide the legal consequence, if any, arising from the participation of the disqualified judge in the entered decision.

Although Advisory Opinion 71 contemplated disqualification after a Court of Appeals oral argument, the Committee explained “[s]imilar considerations would apply when a judgment was entered in a district court by a judge and it is later learned that the judge was disqualified.” With Advisory Opinion 71 in mind, you are invited to respond to Judge Groh’s disclosure of a conflict in this case. Should you wish to respond, please submit your response in writing by filing it on the docket of this case on or before **October 13, 2021**. Any response will be considered by another judge of this court without the participation of Judge Groh.

Sincerely,

  
Cheryl Dean Riley,  
Clerk of Court